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ENFORCEMENT:

EPA hit Range after official said Texas leaders are too cozy with drillers

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The former U.S. EPA official who tangled with Texas officials in a drilling contamination case outside Fort Worth said the state's oil and gas regulators were more interested in promoting the industry than policing it.

The Texas Railroad Commission oversees oil and gas and hasn't overseen trains in years. But Al Armendariz, U.S. EPA's Region 6 Administrator in 2010, told officials at the headquarters that the three-member elected commission doesn't do a very good job of regulating drilling, either.

"As the state entity responsible for promoting oil/gas development, they have a difficult time separating their regulatory responsibility from their close connections to the gas/oil producers," Armendariz wrote in an Dec. 4, 2010, [email](#).

Armendariz and his staff were preparing an "emergency order" accusing Range Resources Corp. of contaminating the water wells of two homes on the outskirts of Fort Worth with methane. State and federal officials had been working together, but EPA officials felt the state commission was dragging its feet.

"I am convinced that if we do not act, the RRC [Railroad Commission] will: delay, state the need for more data, ask the company to voluntarily study the situation, delay some more, etc.," Armendariz wrote.

Railroad Commission officials say their dual role does not hinder their ability to both protect the environment and foster development of oil and gas resources.

"Our mission is to serve Texas by our stewardship of natural resources and the environment, our concern for personal and community safety, and our support of enhanced development and economic vitality for the benefit of Texans," said commission spokeswoman Gaye McElwain.

Armendariz's email was one of many released to *EnergyWire* in response to a Freedom of Information Act request.

On Dec. 7, 2010, EPA issued the order against Range, which also accused state officials of not

doing enough to protect the homeowners and their water.

The Railroad Commission scheduled a hearing the next day for Range to present evidence in the case. It held the hearing in January 2011, and in March 2011 the commission found Range blameless.

A year after that, EPA withdrew its case with little public explanation. Messages between top EPA staffers indicate that they were keen to get Range's cooperation in a national study of the safety of hydraulic fracturing. And days after the charges were dropped, Range's top executives said they would participate (*EnergyWire*, Feb. 14).

Range no longer owns the two wells. They were sold as part of a \$900 million, 390-well deal with Legend Natural Gas, financed by the Carlyle Group and Riverstone Holdings LLC.

The emails obtained by *EnergyWire* show behind-the-scenes maneuvering as EPA officials waded into the debate about the nation's shale drilling, and later as they beat a retreat. They also indicate:

- EPA officials discussed including the Parker County case in the national hydraulic fracturing study, but headquarters officials didn't like the idea.
- EPA officials fumed privately the day the case was dismissed about what Range Resources was saying about the case in the media.
- Shortly before the case was dismissed, Armendariz forwarded a long list of cases to headquarters in which Pennsylvania regulators accused Range of poor well construction that caused gas to leak from the company's wells.
- Armendariz also forwarded a report done for the agency by geologist Geoffrey Thyne to top EPA officials in Washington in November 2011, explaining that it was an "independent analysis of the data" done by an outside expert.

Armendariz received Thyne's report from his enforcement chief, John Blevins, the morning of Nov. 17, 2011. A few hours later, he wrote back.

"Good to have even further validation that we correctly identified produced natural gas impacting a source of drinking water," he wrote.

He then sent it on to Assistant Administrator Cynthia Giles, head of EPA's Office of Enforcement and Compliance Assurance, and senior policy counsel Bob Sussman. His email about it is marked "Enforcement Confidential" and was heavily redacted by EPA. The report itself was not included in the agency's FOIA response to *EnergyWire*. A story by the Associated Press indicates Thyne, who worked at the time for the University of Wyoming's Enhanced Oil Recovery Institute, concluded the gas in the drinking water could have originated from Range Resources' nearby drilling operation.

'Walking back' statements

On the day the charges were dismissed, EPA officials apparently complained to Range spokesman Matt Pitzarella about a public comment from the company. The comment was not included in EPA's FOIA response. Pitzarella responded by saying he wanted EPA to vouch more strongly for the safety of the water around its wells.

"If we're asking for some additions, it would mean a lot to us if you could include that the water and community in Parker County is safe," Pitzarella wrote in an email to an EPA press officer. "We made statements in the past that we're walking back from in an effort to demonstrate the commitment to a partnership and collaboration."

When Pitzarella's response was forwarded to Sussman, he wrote to Giles that he'd "let the company know that I'm very disappointed with their response to this e-mail and their press statements generally."

Giles added back, "I would not say that they lived up to the agreement we had. Good to know for future dealings with them."

While the case was winding through the courts, EPA officials discussed the possibility that the Parker County site could be studied as part of the national study into the safety of hydraulic fracturing.

But some in the agency worried that including it in the study could be used by critics who said the case against Range lacked data. But, one way or another, the Texas site was deemed simply too controversial.

"HQ would prefer to study another location so as to collect information from another site with less attention," Armendariz wrote to members of his regional staff.

Still, he noted that the Region 6 office could push for it to be included in a "Phase 2" of the study.

Frustration with the state

Most state oil and gas agencies have a dual mandate to police the drilling industry but also to promote it (Greenwire, Nov. 30, 2011).

The state law in Texas is actually less explicit than in some states, such as Wyoming, where the law says oil and gas commissioners must be qualified to "serve" the industry.

The three-member Railroad Commission has been criticized frequently for lax enforcement and conflicts of interest (EnergyWire, Feb. 19). The elected commissioners run statewide and receive most of their contributions from the oil and gas industry they are supposed to oversee.

An analysis by the state Legislature's Sunset Review Commission compared the agency to a police officer who keeps writing warnings instead of issuing tickets (Greenwire, Nov. 14, 2011).

In a response to the Sunset panel, the commission wrote, "The commission serves the citizens of Texas well by regulating the development of energy resources for the benefit of the Texas economy, as well as regulating utility rates while balancing important environmental protection concerns. The commission is recognized as a world leader in developing workable regulation for the energy industry and for its leadership in ensuring that resource recovery operations meet or exceed environmental and safety compliance standards."

EPA officials said they had pushed for the state to act in the Range case but that the state kept finding reasons not to act. In an enforcement memo discussed by Armendariz and Giles, officials summed up their frustration with state officials at the Railroad Commission.

"They don't think they should act until the flow pathway has been determined, but they have no plans to try to figure out what the flow pathway is," the memo stated.

But on the day the charges were brought in 2010, the state commissioners were as critical in public as Armendariz was in private.

"This is Washington politics of the worst kind," then-Commissioner Michael Williams said in a statement. "The EPA's act is nothing more than grandstanding in an effort to interject the federal government into Texas business."

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